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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Irvin Donavan Anglin,
10 Petitioner,
11 v.
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No. CV-22-00110-PHX-JJT (JFM)
No. CR-20-00625-PHX-JJT

13 United States of America,
14 Respondent.

ORDER

15 At issue is the Report and Recommendation (Doc. 29, sealed, “R&R”) submitted in
16 this matter by United States Magistrate Judge James F. Metcalf, recommending the Court
17 deny Petitioner’s Amended Motion to Vacate, Set Aside or Correct Sentence Pursuant to
18 28 U.S.C. § 2255 (Doc. 12) for lack of merit. The R&R also recommends the Court deny
19 Petitioner’s Motion for Evidentiary Hearing (Doc. 20, sealed). Petitioner timely filed
20 Objections (Doc. 30), which the Court has considered.

21 In the R&R, Judge Metcalf diligently studied what Petitioner had set forth as five
22 grounds for relief and correctly concluded that Petitioner actually had raised 13 grounds
23 organized as subparts of the five “umbrella” grounds Petitioner had stated, some of which
24 were wholly or partially duplicative of others. Judge Metcalf nonetheless isolated each
25 ground, separately analyzed it under applicable law and provided his recommendations as
26 to each. In his thorough and exhaustive 40-page R&R, Judge Metcalf patiently corrected
27 substantial factual misstatements and misstatements about the applicable law and
28 concluded that none of the 13 grounds that Petitioner raised succeeded on the merits. After

1 independent review, the Court will adopt Judge Metcalf's R&R in whole, including his
 2 analysis and conclusions.

3 Petitioner's Objections miss the mark on all grounds. Several of those objections—
 4 wherein he simply labels Judge Metcalf's reasoning or conclusions "PERJURY," stating
 5 "the Court is allegedly lying" (Doc. 30 at 2, sealed); or "SLANDER," commenting that
 6 Judge Metcalf's conclusion "is completely unacceptable Court bias" (Doc. 30 at 8, sealed);
 7 or "FALSE CLAIM by the Court" (Doc. 30 at 1, 9, sealed)—fail to address any purported
 8 substantive error by Judge Metcalf, instead favoring needless personal attacks. Other
 9 objections, such as those where Petitioner argues "MISREPRESENTATION OF
 10 EVIDENCE OF RECORD"¹ (Doc. 30 at 7); "PREJUDICIAL PREJUDICE" (Doc. 30 at 7,
 11 sealed); or "ASKED AND ANSWERED" (Doc. 30 at 9, sealed), are simply inapposite to
 12 the issues before the Court and fail to direct it to any potential misapprehensions of fact or
 13 errors of law.²

14 Where Petitioner objects to the R&R's conclusions as "illogical" or "invalid"
 15 arguments, or conclusions that are contradicted by other evidence arguments, the Court is
 16 far better able to discern the points Petitioner is trying to make. However, on close

17 ¹ This particular objection illustrates a failure to grasp the applicable procedural law,
 18 in that the misrepresentation Petitioner complains about is Judge Metcalf's "unauthorized
 19 use" of what Petitioner styles "private documents." (Doc. 30 at 7, sealed.) The "private
 20 document" at issue is an email Petitioner sent to his counsel during the pendency of his
 21 criminal case explaining his "Backstory," which Petitioner included as an exhibit to his
 22 Motion for Evidentiary Hearing in the instant matter. (Doc. 20-1, Exh. R-I, sealed.)
 23 Petitioner has placed a thin handwritten "X" over all but two paragraphs of the nearly three-
 24 page email, but the entire email is easily readable. [REDACTED]

25 [REDACTED] Petitioner
 26 takes the position that although he provided this document to the Court in support of his
 27 motion for a hearing, Judge Metcalf's use of a statement Petitioner put a line through
 28 renders his conclusion on the point invalid. That is simply incorrect. "[W]hen [the privilege
 holder's] conduct touches a certain point of disclosure, fairness requires that his privilege
 shall cease whether he intended that result or not. He cannot be allowed, after disclosing
 as much as he pleases, to withhold the remainder. He may elect to withhold or disclose, but
 after a certain point his election must remain final." *Weil v. Investment/Indicators,
 Research. & Mgmt., Inc.*, 647 F.2d 18, 24 (9th Cir. 1981) (internal citations and quotations
 omitted).

29 ² For example, the evidentiary objection "asked and answered" might be appropriate
 30 in a trial or hearing where the Federal Rules of Evidence apply, but in the context of federal
 31 habeas proceedings, it is meaningless.

1 examination of those objections on the merits, the each ultimately fails. As the Court noted
 2 above, Judge Metcalf's R&R was exhaustive and meticulous, going through each of
 3 Petitioner's arguments point by point. The Court will not repeat those detailed analyses,
 4 having incorporated them into this Order. It will simply observe that Petitioner's
 5 discernable and comprehensible objections ultimately all consisted of self-serving and
 6 conclusory statements that failed to engage the findings Judge Metcalf had made, all of
 7 which center on the record, that Petitioner's counsel in the criminal matter was not
 8 ineffective within the meaning of *Strickland*. The text of the plea agreement Petitioner
 9 signed, the transcript of his change of plea hearing before Magistrate Judge Burns, the
 10 affidavit of Petitioner's defense counsel,³ and the emails Petitioner provided the Court in
 11 support of his Motion for Evidentiary hearing, all make clear that counsel communicated
 12 with and advised Petitioner on the issues Petitioner now urges otherwise, and Petitioner's
 13 plea was knowing.

14 **IT IS ORDERED** overruling Petitioner's Objections (Doc. 30, sealed) and
 15 adopting in whole Judge Metcalf's R&R (Doc. 29, sealed).

16 **IT IS FURTHER ORDERED** denying the Amended Motion to Vacate, Set Aside
 17 or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 12) for lack of merit on all grounds
 18 raised.

19 **IT IS FURTHER ORDERED** denying the Motion for Evidentiary Hearing
 20 (Doc. 20, sealed).

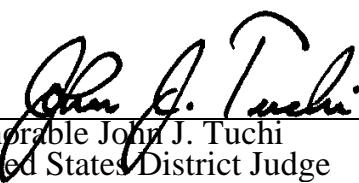
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22 ³ Similar to his misunderstanding of the consequences of furnishing to the Court
 23 emails between him and his counsel, Petitioner argues in his Objections that Judge Metcalf
 24 wrongly relied on his counsel's affidavit to the Court; Petitioner urges the affidavit is
 25 "inadmissible" for purposes of deciding his Petition. He is incorrect. The Court entered an
 26 Order expressly granting Respondent's motion for a declaration that the attorney-client
 27 privilege in the underlying criminal representation of Petitioner was waived with regard to
 28 Petitioner's claims of ineffective assistance "only in this proceeding and only to adjudicate
 "the remaining ineffective assistance claims. (Doc. 11 at 5.) This was appropriate because,
 as Judge Metcalf observed, "[a] person placing their communications with counsel at issue
 in a proceeding generally must waive the attorney-client privilege to the extent necessary
 to permit a fair resolution of the proceeding." (Doc. 11 at 2.) Petitioner placed those
 communications in issue when he alleged in his Petition that Mr. Lopez's representation
 was ineffective for failure to communicate any number of issues, occurrences and advice
 to him. And Judge Metcalf's Order was tailored to those limited circumstances, as was
 Mr. Lopez's declaration.

1 **IT IS FURTHER ORDERED** directing the Clerk of the Court to enter judgment
2 accordingly and close this matter.

3 **IT IS FURTHER ORDERED** denying a Certificate of Appealability in this matter
4 upon a finding that jurists of reason would not find the Court's assessment of the
5 constitutional claims debatable or wrong.

6 Dated this 27th day of July, 2023.

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8 Honorable John J. Tuchi
9 United States District Judge

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